

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

MARCUS WAYNE FIELDS
ADC #150118

PLAINTIFF

v.

2:18cv00172-DPM-JJV

STIEVE, Dr./Regional Director, ADC,
PATRICK DRUMMOND, APN, Correct
Care Solutions, CAMPBELL, APN, Correct
Care Solutions, GREGARY RECHIGL,
Administrator, Correct Care Solutions

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge D.P. Marshall, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Marcus Wayne Fields (“Plaintiff”) is incarcerated at the East Arkansas Regional Unit of the Arkansas Department of Correction and filed this action *pro se* pursuant to 42 U.S.C. § 1983. (Doc. No. 1.) He also filed a motion to proceed *in forma pauperis*. (Doc. No. 3.) Plaintiff is a “three striker.” (Doc. No. 5.) While Plaintiff alleged that a certain prescription was discontinued and a stair restriction denied in violation of his rights, the grievances he attached to his Complaint reflect that he has been receiving medical care and that the decisions regarding the prescription and stair restriction were made in the process of medical evaluation; Plaintiff has not established that he is in imminent danger of serious physical harm. (*See* Doc. Nos. 1, 5.) Accordingly, on January 2, 2019, I directed Plaintiff to file the statutory filing fee of \$400.00 within fourteen days. (Doc. No. 5.) Plaintiff was warned that his failure to do so would result in the dismissal of this action without prejudice. (*Id.*)

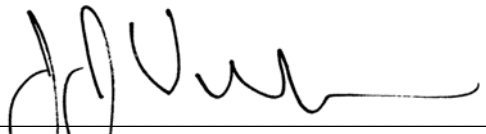
More than fourteen days have passed since the January 2 Order was entered and Plaintiff has not paid the filing fee. Plaintiff filed a Response to the Order in which he maintains he requires surgery to repair injuries to his right knee indicated in a January 20, 2016 MRI, specifically a displaced patella and meniscal tear. (Doc. No. 8, at 1-2.) He also asserts that he should be allowed

to proceed IFP to “prove past misconduct and be compensated for it.” (*Id.* at 3.) Nothing in Plaintiff’s Response indicates imminent danger of serious physical harm. Accordingly, I recommend that this action be dismissed without prejudice.

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff’s Complaint (Doc. No. 1) be DISMISSED without prejudice.
2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations and the accompanying Judgment would not be taken in good faith.

DATED this 24th day of January 2019.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE